In the Supreme Court of the United States.

OCTOBER TERM, 1904.

THE UNITED STATES, APPELLANT,
v.
WALTER S. CROSLEY.
} No. 96.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The claimant, during the period mentioned in his petition, was a lieutenant, junior grade, in the Navy and an aid to Rear-Admiral J. C. Watson, who during that time was one of the nine higher numbers of the grade of rear-admiral, ranking with a major-general in the United States Army. The officer of corresponding rank in the Army to that of the claimant is a first lieutenant. He brought this action in the Court of Claims to recover, in addition to the pay allowed him during said period by the accounting officers, the $200 per year provided by section 1261, Revised Statutes, as the pay of an aid to a major-general; also to recover the difference between the pay received by him and the mounted pay of a first lieutenant in the Army.

The Court of Claims allowed his claim, and gave him judgment in the sum of $394. From this judgment the United States appeals to this court, and makes the following

ASSIGNMENT OF ERRORS:

First. The court erred in its conclusion of law in holding that the claimant recover "judgment of and from the United States in the sum of $394."

Second. The court erred in ordering judgment to be entered in favor of the claimant in any amount whatever.

ARGUMENT.

In determining the issues here presented, it is necessary to consider the following statutes:

> That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army. (Part of section 13, act of March 3, 1899, known as the "Navy Personnel Act.")

Section 1098, Revised Statutes, provides, in part:

> Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the Army.

Section 1261, Revised Statutes, provides in part as follows:

> The officers of the Army shall be entitled to the pay herein stated after their respective designations: * * * First lieutenant, mounted,

> sixteen hundred dollars a year; first lieutenant, not mounted, fifteen hundred dollars a year, * * * aid to major-general, two hundred dollars a year, in addition to pay of his rank.

Paragraph 1301 of the Army Regulations provides in part:

> The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers.

Section 1466, Revised Statutes, fixes the relative rank between officers of the Navy and officers of the Army, and gives rear-admirals rank with major-generals and masters with first lieutenants in the Army. The title "master" was subsequently changed to "lieutenant, junior grade," which is the rank held by claimant, and he holds the same relative rank as a first lieutenant in the Army. Section 1261, Revised Statutes, designates first lieutenants, mounted and not mounted, thereby recognizing the condition applicable to officers of that class dependent upon whether they belong to the cavalry or infantry service. A lieutenant in the cavalry is presumed to be mounted, a lieutenant in the infantry is presumed not to be mounted, and the classification of "mounted" and "unmounted" pay was intended in a

general way to mark a distinction between the pay of an officer engaged in the cavalry and an officer engaged in the infantry service.

Having determined claimant's rank, which is that of lieutenant, junior grade, in the Navy, it should not be difficult to ascertain his pay, by reference to the pay of an officer of the same rank in the Army, and we here insist that it is a question of rank which determines the pay and not the character of the service which the officer performs. The position of aid to either a major-general or to a rear-admiral is not a distinct rank, within the meaning of the law.

If the $200 paid to an aid to a major-general is, as assumed by Mr. Justice Howry, speaking for the Court of Claims, "The additional pay to the Army officer is in the nature of an allowance. It goes to his rank, depends on rank, and is extra pay for special service" (Rec., p. 8), or if it is extra pay of the officer of corresponding rank in the Army to that of the claimant, for special service, then the decision of the Court of Claims would seem to be well founded, because it would be in accordance with the provisions of the naval personnel act giving to officers in the Navy the same pay and allowances as are provided by law for officers of corresponding rank in the Army, the spirit of which statute is, as we think, clearly that the pay of officers of corresponding rank in the two branches of the service shall be the same for similar services or services under like official circumstances. But the difficulty with this proposition is that the $200 in question is by

the very terms of the statute not the pay of the rank of a lieutenant in the Army, the officer of corresponding rank with that of the claimant, but is explicitly the pay of an aid to a major-general, and given to such aid in addition to the pay of his rank, which rank, as provided for in section 1098, *supra*, may be either that of captain, first lieutenant, or second lieutenant. So that pursuant to these statutes an aid to a major-general receives two compensations, one the pay of his rank, whether captain, first lieutenant, or second lieutenant, and the other a fixed sum of $200 as aid and without reference to his rank. Since, then, this $200 is, by the terms of the statute, the pay of an aid to a major-general, it can not be said in any sense to be the pay of either a captain or a first lieutenant or a second lieutenant, but is simply what it is stated to be—the pay of an aid to a major-general. Now, whilst an aid to a rear-admiral undoubtedly performs services similar to those of an aid to a major-general, and whilst very probably justice would demand that he should receive the same pay therefor, the fact remains that there is no provision of statute assimilating the rank of an aid to a rear-admiral with that of an aid to a major-general, and therefore no claim based upon the navy personnel act can be made by an aid to a rear-admiral for the same compensation as that of an aid to a major-general. That is to say, the navy personnel act, very likely by oversight, leaves an aid to a rear-admiral in exactly the same position as it found him, with no provision for his compensation for his services as such aid.

When the language of a statute is plain and when it is not necessary to resort to any other means than the language itself in order to give an interpretation to the law, then a statute is said to interpret itself and it is not the province of the court to read into a statute what it does not express.

The court below in its opinion says, "The additional pay to the army officer is in the nature of an allowance." We do not think that the pay granted to aids is an allowance. An allowance is a fixed, stipulated sum that goes with the rank, and, as we have heretofore pointed out, officers of different ranks may be designated as aids, but the pay for acting as an aid does not go with the rank but depends solely upon service as aid, and is pay for such service which may be given to officers holding different ranks when they perform the duties of aids. It may be that Congress in thus legislating has done an injustice to the claimant and other naval officers who act as aids to rear-admirals in not giving to them the pay for such duties which is allowed to aids acting as such to major-generals, but if so, it is not the province of the court to correct the error.

MOUNTED PAY.

The claimant, of course, is not entitled to mounted pay by reason of acting as aid to a rear-admiral if the court should find that he is not entitled to $200 pay as aid, since the mounted pay is claimed as the pay of an aid to a major-general. But it may be contended that he should rank for the purpose of pay with a first

lieutenant mounted, and that therefore he is entitled to mounted pay. The increase in pay for mounted service follows the condition where the officer is compelled to keep a horse in order to the proper performance of his duties. No such condition is possible in sea service in the Navy. The right to mounted pay depends wholly upon the condition of mounted service, or a kind of service that requires the officer performing the same to be mounted, and since claimant was in a position where he could not have performed mounted service, and where such service was palpably inappropriate to his situation, it does not come within the conditions which entitle him to mounted pay.

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